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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,399	09/26/2006	Shaow Lin	DC10103 PCT1	9226
7590 Alan Zombeck Dow Corning Corporation 2200 W Salzburg Road Midland, MI 48686-0994			EXAMINER LOEWE, ROBERT S	
			ART UNIT 1796	PAPER NUMBER
			MAIL DATE 05/27/2010	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/594,399

**Applicant(s)**

LIN ET AL.

**Examiner**

ROBERT LOEWE

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 April 2010.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 11 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 26 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SI.08)  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_  
5) ☐ Notice of Interval Patent Application  
6) ☐ Other: \_\_\_\_\_  
Paper No(s)/Mail Date: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/5/10 has been entered.

### ***Response to Arguments***

Applicant's amendments, filed on 4/5/10, have been fully considered and are not found to be persuasive. Applicants only state that the amendments define an invention which is unobvious over Cen et al. (US Pat. 6,632,420) in view of Tsubaki et al. (US Pat. 5,472,686). However, claim 11 is still believed to be rendered obvious by Cen et al. in view of Tsubaki et al. as described in the rejection below.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cen et al. (US Pat. 6,632,420) in view of Tsubaki et al. (US Pat. 5,472,686).

Cen et al. teaches a process for making a clear personal care product in the form of a microemulsion (claim 38 of Cen et al.) comprising mixing 10-50% water (6:59 and claim 38), 1

to 90% of an alcohol (6:65-67 and claim 38) such as ethanol (6:61), and 1-20% of an AB-type silicone polyether (5:21-23 and claim 38). Cen et al. further teaches mixing the ingredients to form a microemulsion (example 2). The amount of silicone polyether, water and alcohol have sufficient overlap with the amounts of components (A) (B) and water of instant claim 11 so as to render such amounts obvious.

Cen et al. does not teach that the silicone polyether graft copolymer is of the  $(AB)_n$  type of instant claim 11. However, Tsubaki et al. does explicitly teach  $(AB)_n$  block silicone polyether copolymers which have the structural limitations of instant claim 11 [examples 1 and 2 of Tsubaki et al.]. Cen et al. and Tsubaki et al. are combinable because they are from the same field of endeavor, namely, personal care compositions comprising silicone polyether copolymers. At the time of the invention, a person having ordinary skill in the art would have found it obvious to employ the  $(AB)_n$  block silicone polyether copolymers as taught by Tsubaki et al. into the aqueous microemulsions as taught by Cen et al. and would have been motivated to do so because Tsubaki et al. teaches the advantages that the  $(AB)_n$  block silicone polyether copolymers have in various cosmetic formulations when compared to the graft silicone polyether copolymers and ABA block silicone copolymers such as those taught by Cen et al. (control examples 9, 12, 13, 16, 18, 20, 22 and 24 of Tsubaki et al.).

Cen et al. further teaches that the microemulsions may exist in the form of vesicles (2:5-19). Since Tsubaki et al. renders obvious the use of the same silicone-polyether block copolymers as required by instant claim 11, it follows that the aqueous dispersions comprise dispersed particles having an average particle size of less than 10 microns. The courts have stated that "Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a *prima facie* case of either anticipation or obviousness has been established."

#### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT LOEWE whose telephone number is (571)270-3298. The examiner can normally be reached on Monday through Friday from 5:30 AM to 3:00 PM EST.

Art Unit: 1796

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert Loewe/  
Patent Examiner, Art Unit 1796  
20-May-10